HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 17491 OF 2004

DATED: 30.1.2006

Between:

B. Ravindranath and others

… Petitioners

and

The BHEL (MIG) Employees Cooperative

Housing Society Ltd and another

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.17491 OF 2004

ORAL ORDER:

Writ Petition is hopelessly misconceived.

Petitioners were employees of the 1st respondent, an Employees Cooperative Housing Society Limited. They were in employment as such on various dates and in various years since 1990. They were employed to look after the maintenance of the roads, drainage system, water supply and the like of the colony established by the Members of the 1st respondent-Society, under the administrative guidance and control of the 1st respondent-Society.

According to the petitioners, the Executive Committee of the 1st respondent entered into a Memorandum of Understanding (MOU) dated 23.10.2002 with the 2nd respondent for handing over of the entire maintenance and developmental activities of the colony and maintenance of civil amenities to the 2nd respondent. The petitioners also plead that the second respondent in the MOU, agreed to absorb all the existing staff of the 1st respondent-Society into the fold of the 2nd respondent-Municipality and to protect and continue the existing facilities without retrenching them. The petitioners also assert that the 2nd respondent had however not acted on the MOU and has also unilaterally and by a communication dated 6.2.2003 addressed to the 1st respondent, informed the 1st respondent-Society that the MOU is impracticable, in contravention of law, is not binding, and is therefore cancelled.

On 6.3.2003, it appears, the services of the petitioners were terminated w.e.f. 15.4.2003. Questioning the termination, the petitioners filed W.P.No.5408 of 2003. They were granted an interim direction to continue them in service. On an oral assurance by the then Commissioner of the 2nd respondent-Municipality, the petitioners withdrew W.P.No.5408 of 2003; the withdrawal was recorded by the order of this court dated 17.7.2003. The order however does not mention any reason for permitting the withdrawal. It is an order permitting the withdrawal of the writ petition, simpliciter. Eventually by the impugned proceedings dated 27.8.2004, each of the petitioners have been intimated by the 1st respondent that since there are no

funds for maintenance of the Society, the Society is not in a position to pay the salaries of the employees and therefore each of the employees is issued a month's notice of termination of services and that the services of each of the petitioners' would be terminated w.e.f.30.9.2004, A.N. It is against the order dated 27.8.2004 that the writ petition is filed.

The petitioners neither plead, assert or demonstrate before this court that the 1st respondent is a State or an agency or instrumentality of the State, within the meaning of Article 12 of the Constitution of India. The services of the petitioners with the 1st respondent-Society are not public services and the petitioners are not entitled to any public law obligations, on the part of the 1st respondent. The so-called MOU arrived at between the 1st and the 2nd respondents does not appear to have any legal foundation or basis. Petitioners do not plead the authority of the Commissioner of the 2nd respondent-Municipality to have entered into such an MOU and under any provision of law.

On the aforesaid analysis, the writ petition is misconceived and is accordingly dismissed. The interim order dated 29.9.2004 stands dissolved. Petitioners are at liberty to pursue any other appropriate remedies as advised.

GODA RAGHURAM, J

Date: 30.1.2006

cvm